

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING ON
of ARM 17.8.601, 17.8.604,) PROPOSED AMENDMENT
17.8.605, 17.8.606, 17.8.610,)
17.8.612 and 17.8.614)
pertaining to open burning) (AIR QUALITY)

TO: All Concerned Persons

1. On _____, 2002 at _____ a.m., the Board of Environmental Review will hold a public hearing in Room _____ of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., _____, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386 or email ber@state.mt.us.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.601 DEFINITIONS (1) "Best available control technology" (BACT) means those techniques and methods of controlling emission of pollutants from an existing or proposed open burning source which limit those emissions to the maximum degree which the department determines, on a case-by-case basis, is achievable for that source, taking into account impacts on energy use, the environment, and the economy, and any other costs, including cost to the source.

(a) Such techniques and methods may include the following:

(i) through (vii) remain the same.

(viii) prioritizing burns as to air quality impact and assigning control techniques accordingly; ~~and~~

(ix) promoting alternative treatments and uses of materials to be burned-; and

(x) selecting sites that will minimize smoke impacts.

(b) For essential agricultural open burning, ~~or~~ prescribed wildland open burning, conditional air quality open burning, or any other minor open burning during September, October, or November, BACT includes burning only during the time periods specified by the department, which may be determined by calling the department at (800) 225-6779.

(c) For essential agricultural open burning, prescribed wildland open burning, conditional air quality open burning,

or any other minor open burning during December, January or February, BACT includes burning only during the time periods specified by the department, which may be determined by calling the department at (800) 225-6779.

(2) through (6) remain the same.

(7) "Open burning" means combustion of any material directly in the open air without a receptacle, or in a receptacle other than a furnace, multiple chambered incinerator, or wood waste burner, with the exception of combustion of ordnance, small recreational fires, construction site heating devices used to warm workers, or safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants or elemental phosphorus plants.

(8) through (9) remain the same.

(10) "Trade wastes" means solid, liquid, or gaseous material resulting from construction or operation of any business, trade, industry, or demolition project. Wood product industry wastes such as sawdust, bark, peelings, chips, shavings, and cull wood are considered trade wastes. Trade wastes do not include wastes generally disposed of by essential agricultural open burning, ~~and~~ prescribed wildland open burning, or Christmas tree waste, as defined in this rule.

(11) remains the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

17.8.604 MATERIALS PROHIBITED FROM OPEN BURNING—WHEN PERMIT REQUIRED

(1) The following material may not be disposed of by open burning:

(a) any waste which is moved from the premises where it was generated, ~~including waste moved to a solid waste disposal site,~~ except as provided in ARM 17.8.611 or 17.8.612(4)(a) or (4)(b), or unless approval is granted by the department on a case-by-case basis;

(b) through (d) remain the same.

(e) wood and wood byproducts ~~other than trade wastes~~ that have been coated, painted, stained, treated, or contaminated by a foreign material, ~~such as papers, cardboard, or painted or stained wood, unless a public or private garbage hauler or rural container system is unavailable, or~~ unless open burning is allowed under ARM 17.8.614 or 17.8.615;

(f) through (v) remain the same.

(w) asbestos or asbestos-containing materials; ~~and~~

(x) standing or demolished structures containing prohibited material, except as provided in ARM 17.8.612, 17.8.614, or 17.8.615; and

(y) paint, except as provided in ARM 17.8.614 or 17.8.615.

(2) remains the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, 75-2-211, MCA

17.8.605 SPECIAL BURNING PERIODS (1) The following categories of open burning may be conducted during the entire year:

- (a) and(b) remain the same.
- (c) open burning authorized under the emergency open burning permit provisions in ARM 17.8.611; ~~and~~
- (d) essential agricultural open burning;
- (e) conditional air quality open burning;
- (f) commercial film production open burning;
- (g) Christmas tree waste open burning; and
- (h) any minor open burning that is not prohibited by ARM 17.8.604.

(2) remains the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, MCA

17.8.606 MINOR OPEN BURNING SOURCE REQUIREMENTS

(1) through (2)(c) remain the same.

(3) During September, October, or November, to conduct ~~essential agricultural open burning or prescribed wildland open burning~~ any minor open burning not prohibited by ARM 17.8.604, a minor open burning source must adhere to the ~~time periods set for~~ burning restrictions established by the department that are available by calling the department at (800) 225-6779.

(4) During December, January, or February, to conduct ~~essential agricultural open burning or prescribed wildland open burning~~ any minor open burning that is not prohibited by ARM 17.8.604, a minor open burning source must comply with the following conditions:

(a) Outside the eastern Montana open burning zone, a minor open burning source must:

(i) submit a written request to the department, demonstrating that the ~~essential agricultural open burning, or prescribed wildland open burning, or any minor open burning that is not prohibited by ARM 17.8.604~~ essential agricultural open burning, or prescribed wildland open burning, or any other minor open burning that is not prohibited by ARM 17.8.604 must be conducted prior to reopening of open burning in March;

(ii) and (iii) remain the same.

(b) Inside the eastern Montana open burning zone, a minor open burning source need only notify the department by telephone of any essential agricultural open burning, prescribed wildland open burning, or any other minor open burning that is not prohibited by ARM 17.8.604 prior to ignition. Burning is allowed when ventilation conditions are good or excellent. Ventilation conditions are determined by the department using a ventilation index, which is defined as the product of the mixing depth in feet at the time of the daily maximum temperature, times the average transport wind in knots through the mixed layer divided by 100. Good or excellent ventilation conditions exist when the ventilation

index is 400 or higher. Forecasts of ventilation conditions may be obtained by calling the department at (800) 225-6779.

(5) and (6) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, MCA

17.8.610 MAJOR OPEN BURNING SOURCE RESTRICTIONS

(1) through (3) remain the same.

(4) A major open burning source must:

(a) remains the same.

(b) comply with the conditions in any air quality open burning permit issued to it by the department, which will be in effect for 1 year from its date of issuance or another time frame as specified in the permit by the department; ~~and.~~

(5) remains the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

17.8.612 CONDITIONAL AIR QUALITY OPEN BURNING PERMITS

(1) through (3) remain the same.

(4) The department may issue a conditional air quality open burning permit to dispose of:

(a) solid wood and wood byproduct trade wastes by any business, trade, industry, or demolition project; or

(b) untreated wood waste at a licensed landfill site, if the department determines that:

(i) the proposed open burning will occur at an approved burn site, as designated in the solid waste management system license issued by the department pursuant to ARM Title 17, chapter 50, subchapter 5; ~~and~~

(ii) ~~prior to issuance of the air quality open burning permit, the wood waste pile is inspected by the department or its designated representative and no prohibited materials listed in ARM 17.8.604, other than wood waste, are present the material to be burned complies with ARM Title 17, chapter 50, subchapter 5; and~~

(iii) prior to each burn, the burn pile was inspected by the department or its designated representative and no prohibited materials listed in ARM 17.8.604 were present.

(5) A permit issued under this rule is valid for the following periods:

(a) wood and wood byproduct trade waste--one year; ~~applicants may reapply for a permit annually; and~~

(b) untreated wood waste at licensed landfill sites--~~single burn one year. A new permit must be obtained for each burn.~~

(6) through (10) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

17.8.614 COMMERCIAL FILM PRODUCTION OPEN BURNING PERMITS

MAR Notice No. 17-____

(1) The department may issue an air quality commercial film production open burning permit for open burning of otherwise prohibited material as part of a commercial, ~~or~~ educational film, or video production for motion pictures or television. Use of pyrotechnic special effects materials, including bulk powder compositions and devices, smoke powder compositions and devices, matches and fuses, squibs and detonators, and fireworks specifically created for use by special effects pyrotechnicians for use in motion picture or video productions is not considered open burning.

(2) through (8) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

REASON: The Department proposes to amend ARM 17.8.601, 17.8.604, 17.8.605, 17.8.606, 17.8.610, 17.8.612, and 17.8.614 to revise conditional, essential agricultural, and minor source open burning rules to allow certain minor open burning in winter, primarily in eastern Montana. The proposed amendments would revise the time periods, materials, and criteria applicable to such open burning. The current rules allow only prescribed wildland open burning, open burning to train firefighters, emergency open burning, and essential agricultural open burning to take place during the winter season (December through February). However, the prescribed wildland and agricultural open burns are generally larger and create greater impacts than other minor open burning sources. The proposed amendments are necessary to allow all types of non-prohibited minor open burning to take place in the Eastern Montana Open Burning Zone during the winter season and allow the Department the flexibility to approve valid burning requests outside that area that will not adversely affect air quality.

Burners located outside the Eastern Montana Open Burning Zone would be subject to Department review and would require prior approval from the Department. Burners located in the Eastern Montana Open Burning Zone would still be required to notify the Department prior to burning.

Currently, landfill open burning often cannot be completed in a single burn within the 30-day time period that the permit is valid. The proposed amendments would change the time these permits are valid to one year, and would require the Department or its designated representative to inspect burn piles at licensed landfills prior to every burn to ensure that no prohibited materials are in the piles.

The current air quality open burning rules may be in conflict with the solid waste rules that regulate open burning conducted at licensed landfills. The proposed amendments to allow burning of discovered ordnance, to prohibit burning of paint and other prohibited material in standing or demolished structures, and to revise conditional open burning permit requirements would make the rules consistent with state and federal solid waste rules that regulate such burning.

Minor editorial and grammatical changes are also proposed to make the rules more readable, but are not intended to change the meaning of the rules.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us and must be received no later than 5:00 p.m., _____ 2002. To be guaranteed consideration, the comments must be postmarked on or before that date.

5. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA, underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@state.mt.us or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

DAVID RUSOFF
Rule Reviewer

By: _____
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, _____, 2002.